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SUBJECT: FRANCE: ANNUAL SECTION 1377 REVIEW OF TELECOM TRADE AGREEMENTS

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Introduction and Summary

[1](#)1. On January 26, EconOff and visiting USTR telecom trade specialist Ken Schagrin met with GOF Industry Ministry (DIGITIP) officials as well as Telecom Regulatory Authority (ART) officials to discuss concerns raised in response to the reftel Federal Register Notice published on November 24, 2004. The three sections that follow are based on our dialogue with these officials as well as our conversations with local telecom operators and industry groups throughout the year. In response to our follow-up questions, ART provided further comments regarding unbundled leased lines in early March. In sum, they noted changes to French law and subsequent changes to the process for negotiating the reference interconnection offering and stressed their view that the strengthening of ART's authority as well as the process of market analysis are calculated to provide the kind of remedies that are fundamental to a sound and well-functioning competitive telecom market. Indeed, ART wields much more power, as was noted by DIGITIP officials when they said that the EU regulatory framework's implementation is totally in the hands of the regulator, i.e. there is no role for the Industry Ministry in the process of drafting regulatory texts. End summary and introduction.

EXCESSIVE FIXED TO MOBILE TERMINATION RATES

Is there any ratio between rates charged for termination on fixed networks and rates charged for termination on mobile networks that reflects the disparate costs of the different networks? What would be a reasonable ratio?

[1](#)2. Our contacts have never mentioned a ratio, neither at the telecom regulator (ART) nor among industry experts. There is general agreement in France that mobile termination charges are too high. However, there is also widespread acknowledgement that ART has made significant and steady progress addressing this issue through mandatory decreases, which are imposed upon all mobile operators. ART began regulating fixed-to-mobile (F2M) termination in 1999, imposing a series of reductions (20% in 1999, 20% in 2000, and 40% over three years from 2002-2004) that have moved France from one of the worst offenders in Europe for excessive pricing of F2M to one of the best in Europe. During our January meeting, ART officials highlighted for us that they had once again just compelled all three mobile operators to reduce these charges further by 36% over two years. This reduction was not required to be immediate, nor was it required to affect calls originating in foreign countries. Nevertheless, mobile operators have taken quick action and are including foreign-originated calls in the reductions, we were told.

[1](#)3. Orange began to lower its rates beginning in January 2005, with regular reduction from now until 2007 in order to allow the market to progressively adapt over the course of the period. ART officials assured us that calls of foreign origin will experience the same evolution. The lowering of termination charges decided upon by the ART (36% over 2 years) from January 1, 2005, will -- just like the tariffs themselves -- be identical for calls originating in France and in foreign countries. To address charges of cross-subsidization between mobile and fixed line services, our ART contact noted that, while some have charged that Orange and SFR are vertically integrated companies, mobile and fixed phone services have separate accounts (an obligation contained in the European directives). Moreover, mobile operators in France now include MVNO (Breizh Telecom and Debitel) and competition is progressing.

-- What is the status of your implementation of the EU directive to analyze telecom submarkets and identify instances of significant market power, with respect to mobile termination? If you have found SMP, what is the status of implementing remedies?

14. ART is in the process of carrying out the market analyses and taking the necessary measures according to the results of these analyses. (The status of the various market analyses can be found on ART's web site at: www.art-telecom.fr) For instance, ART completed on February 1, 2005, its market analysis of voice call termination on mobile networks for overseas departments. As a result, ART imposed a 49% decrease in wholesale prices for call termination over three years on the two main mobile operators in Reunion and in the Antilles-Guyana zone, with an initial decline of 20% on April 1, 2005. This measure should reduce the cost of fixed-mobile calls in France's overseas departments by 38% over three years. Currently for mainland France, ART is still in the process of doing the market analyses and will be envisioning some remedies: obligation of access, non-discrimination and transparency (reference: "Bill and Keep"), separation of accounting, determination of the reference costs, cost control and lowering rates over several years.

15. More generally, we found it noteworthy that DIGITIP officials not only acknowledged, but highlighted for us ART's increased power under the new EU regulatory framework that was transposed into French law last July. DIGITIP Deputy Director for Institutional Relations Henri Breuil told us "our role was to give (regulatory) power to ART (such that) ART now has the same powers as the UK's Ofcom."

- Does ART's decision of December 10, 2004, to decrease fixed-to-mobile interconnection rates by 36% apply to calls originating outside of France? If not, why not?

16. Our understanding of ART's explanation of their most recent imposed decreases in F2M charges was that, while ART did not require that these decreases be applied to calls outside of France, Orange and other operators were applying the reduced charges to all calls no matter what their origin. (See para 3 above.)

EXCESSIVE PRICING AND PROVISIONING DELAYS
FOR ACCESS TO LEASED LINES

RATES: Are the wholesale (carrier) rates being charged for leased lines used by carriers (e.g., two megabit link between a carrier's network and its customers) regulated? If so, how are the rates set? Does the regulator benchmark them against other comparable markets? Is the process for determining rates transparent? Can interested parties challenge cost-data submitted by the incumbent operator?

PROVISIONING: Is the regulator aware of complaints about the time it takes to receive a line? What are the factors that effect delivery? We have heard allegations that the incumbent is providing leased lines faster to their end-user customers than they are providing them to requesting competitors. Are there reporting requirements to monitor this? If not, how is this monitored? If so, are the reports public?

17. While DIGITIP officials confirmed to us that the GOF Ministry of Finance and Industry has no role or power over leased lines, in response to these questions, ART officials told us that the process of supplying leased lines complies with the general approval process of the interconnection catalogue, namely the annual approval process of wholesale charges, which is identical for leased lines and for the interconnection network traffic. ART detailed for us the approval process steps:

--Proposed offerings ("the base offer") are sent by FT mid-year the year before offers are to take effect.
--Negotiations with ART and with new entrants via the interconnection committee.
--Discussion of rate levels (a comparison of the charges proposed by FT and those given by the CMILT Bottom Up model).
--Comparison between the list of services proposed by FT and the needs of the new entrants to improve the base offer.
--Final phase of direct negotiation between ART and FT.
--Approval and publication by ART at the end of the year (we have noted that this usually occurs in November) to enter into force on January 1.

18. ART contacts told us that this process will be modified in 2005 under the new law. The new process anticipates that FT will publish its base offer without ART's preliminary approval. ART can then ask FT to make modifications at any time. Article

L. 38 of the new law, which transposed the EU framework directive, inter alia, specifies that "The (SMP or dominant) operators ... should publish a detailed account of technical and rate aspects of the interconnection or access they are offering, when they are obliged to be non-discriminatory. ART can impose modifications on such an offer at any time in order to make it conform to the terms of the present code. To that end, the operator communicates all necessary information to ART." This portion of the new law includes an obligation to make interconnection and access information publicly available. ART believes that this obligation applies to all of the wholesale markets on which France Telecom exerts a dominant

position.

19. FT's base offer must be sufficiently detailed to guarantee that the companies are not obliged to pay for resources that are not necessary for the requested service. It will include a clear description of the pertinent offers for the all wholesale markets of narrow band services, accompanied by the technical and rate conditions and the means of provision. Adhering to the access directive, ART will be able to specify the information that is to be provided, the level of detail required and the mode of publication. The base offer will specify the delays in application and the cancellation conditions for the entirety of the services offered. With respect to delays in modifications of the base offer, rate changes must be preceded by a warning sufficient to assure ART and that the entire sector will be able to reflect these developments in retail prices. As for the benchmarks, our ART contacts referred us to European Commission documents that give detailed information about how difference countries are performing in regards to leased line pricing. (Post emailed these EC documents to EB/CIP, USTR, and EUR/WE on March 4.) With respect to the leased lines base offer, they also noted that the Commission is currently considering "Methodology, reference configuration and data of leased lines in Member States." Finally, on provisioning, ART officials said that a sensible improvement is the first step toward a new European framework. The strengthening of ART's authority, and the process of market analysis, are calculated to provide remedies that are relative to the anticipated delivery in the base offer of leased lines, which they viewed as fundamental criteria to this type of market.

INDEPENDENCE OF THE REGULATOR / FAVORING THE INCUMBENTS

How does France reconcile the continued shared oversight of France Telecom between ART and the Ministry of Finance with its Reference Paper commitment to have an independent regulatory body? Preferential loans recently extended to France Telecom underscore this appearance of favoritism. What steps, if any, in the last year has the French government undertaken to rectify this situation?

110. In response to our questions on this subject, ART pointed out that, on the one hand, the GOF reduced its stake in the capital of FT. Since September 2004, the state has no longer been majority shareholder in FT (GOF currently owns 42.25%). On the other hand, the ART is competent to accept or refuse the rates of the dominant operators, i.e., there will no longer be any "homologization" by the Minister of Industry to approve ART's opinion. The new regulatory framework confers new powers on the regulator and reinforces its independence. ART, and no longer the Minister as was previously the case, acts alone to homologize the retail rates, if necessary.

111. ART officials assured us that analysis of the markets follows a transparent process that limits the government's power of intervention. In this context, they noted their activities with respect to public consultations, consultations with the Competition Council and with the opinion of France's highest Administrative Court, the State Council, as well as other national regulators. We have heard nothing from our industry contacts to contradict ART's assurances regarding transparency and independence of this process. On the question of illegal state aid Given to FT, our ART contacts made only one comment: the European Commission concluded that, although it was a clear case of state aid, it did not justify a fine or a demand for reimbursement.

112. DIGITIP officials -- beyond noting that to implement the new law which transposed the EU telecom framework directive their role was "to give (regulatory) power to ART" as noted above -- said that their current role is similar to the U.S. Commerce Department's NTIA with, although they are somewhat more involved in rulemaking. DIGITIP sits on the industry side of the GOF Ministry of Finance and Industry, but DIGITIP officials nonetheless pointed out the Finance Ministry has delegated authority to an independent Agency of State Participation (known by the French acronym APE) to act on its behalf as a shareholder in France Telecom and other companies in which the GOF has capital holdings. In our view, this is meant in effect not only to create a Chinese wall behind which the GOF can claim that it acts as an unbiased policymaker, but also to de-politicize to the extent possible management of its financial interests and thereby maximize the value of its assets.

Leach